REMARKS

Claims 1, 2, 4-20 and 34-42 are currently pending in the subject application and are presently under consideration. Applicant's representative hereby affirms the election of Group I, claims 1-21 with traverse. Accordingly, claims 22-33 have been withdrawn. Claim 3 has been canceled with the related subject matter incorporated into independent claim 1, and claim 21 has been canceled without prejudice or disclaimer. In addition, claims 1, 2 and 4-20 have been amended herein to correct minor informalities and/or to further emphasize various novel features, and new claims 34-42 have been added. Support for the amendments as well as the new claims can be found at least at page 16, line 23 through page 20, line 22. A listing of the claims showing changes made can be found at pages 2-8 of this Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Objection of Claims 6 and 7

Claims 6 and 7 are objected to because of the following informalities: Claims 6 and 7 recite "the virtual form" and should read "the virtual forum" as recited in independent claim 1. Claims 6 and 7 have been amended to correct the aforementioned informalities. Accordingly, this objection is moot and should be withdrawn.

II. Rejection of Claim 15 Under 35 U.S.C §112

Claim 15 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection should be withdrawn for at least the following reasons. Claim 15 has been amended to particularly point out and distinctly claim the described subject matter.

III. Rejection of Claim 21 Under 35 U.S.C §112

Claim 21 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 has been canceled. Accordingly, this rejection is moot and should be withdrawn.

IV. Rejection of Claims 1, 2, 5-6, 8, 11, 12, and 14 Under 35 U.S.C. §102(e)

Claims 1, 2, 5-6, 8, 11, 12, and 14 stand rejected under 35 U.S.C. §102(e) as being anticipated by Hao *et al.* (US 2003/0041002, hereinafter referred to as "Hao"). Withdrawal of this rejection is respectfully requested for at least the following reasons. Hao does not disclose, teach or suggest each and every feature recited in the subject claims.

> A single prior art reference anticipates a patent claim only if it expressly or inherently describes ***each and every limitation set forth in the patent claim.*** *Trintec Industries, Inc., v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 U.S.P.Q.2D 1597 (Fed. Cir. 2002); *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). ***The identical invention must be shown in as complete detail as is contained in the ... claim.*** *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

The claimed subject matter relates generally to multiple supplier volume pricing. More specifically, a virtual forum can be provided that facilitates electronic communication between buyers and suppliers. For example, a buyer can request bids for a product from suppliers of that product, wherein each of the bidding suppliers (*e.g.*, those that respond to the request for bids) can submit a price curve for the product. The price curve can include a unit price for each tier based upon the quantity/volume. Accordingly, the virtual forum can display various information associated with the bids and/or price curves in real time. (*See e.g.*, pg. 17, ll. 3-31). In particular, independent claim 1 (and similarly independent claim 8) recites, "the virtual forum displays ***in real time*** current ***low bids at each tier as the bids are retrieved.***" Hao does not disclose, teach or suggest each and every feature set forth in the subject claims.

Rather, Hao relates to a method for integrating the electricity market. Hao seeks to optimize the auction of electricity as well as its distribution by simultaneously solving variables of an objective function. (*See* Abstract). More specifically, Hao first collects all bids from market participants, then ***the data collection process is closed*** and no more bids can be received. (*See* paragraph 0032). Closing the bids is required because in order to optimize/minimize the objective function, resource bid curves of all bidders must be known in advance. (*See* paragraphs 0050-0051). Moreover, certain other parameters, such as demand for energy, D_{xi},

and demand for reserve capacity, D_{yi}, at each location, *i*, must also be known in advance, neither of which can be determined until all bids have been received. (*See* paragraph 0056, "Both energy and capacity demands are known"; *see also* paragraph 0073 (indicating that total supply and total demand must be equal in order to find the solution – hence, all bids must be received in advance of the solution)). Accordingly, Hao expressly states there are three discrete stages of the auction process: (i) data gathering, (ii) processing the bids of the auction, and (iii) dissemination of information, performed in order. (*See* paragraph 0042; Fig. 2).

Since all bids must be received prior to processing the bids, which in turn must be completed before publishing the results, Hao does not teach or suggest displaying ***in real time*** current ***low bids at each tier as the bids are retrieved***. Moreover, in Hao, bid data of a market participant (*e.g.*, low bids) are considered private information, which cannot be openly shared. (*See* paragraph 0036). Therefore, even if Hao could perform processing before all bids were submitted, it could not display ***in real time*** current ***low bids at each tier as the bids are retrieved*** because this information cannot be openly shared.

It is submitted that the dependent claims provide additional bases for patentability in addition to those provided with respect to the independent claims. For instance, Hao does not teach or suggest "***a buyer*** specifies the period of time in which bids must be received" as recited in dependent claim 12. At page 8 of the Office Action (dated April 21, 2006), the Examiner argues that the Market Operator of Hao inherently specifies the period of time in which bids must be received because the Market Operator opens and closes the market. While it is readily apparent that a ***Market Operator*** is materially distinct from ***a buyer***, the Examiner incorrectly asserts that since the Market Operator represents the buyer in the auction, the Market Operator constitutes the buyer. In particular, the Examiner's assumption that "the Market Operator represents the buyer" is erroneous and expressly contradicted by the reference itself. (*See* paragraph 0013, "A market operator is ***an independent agency*** responsible for conducting electricity markets by collecting offers from suppliers and bids from purchasers"). Accordingly, this rejection of claim 12 should be withdrawn.

For at least the aforementioned reasons, claims 1 and 8 (as well as the associated dependent claims) are not anticipated by the cited reference. Accordingly, this rejection should be withdrawn.

V. **Rejection of Claims 4 and 9 Under 35 U.S.C. §103(a)**

Claims 4 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hao in view of Abeshouse, *et al.* (US 2002/0099643, hereinafter referred to as "Abeshouse"). Withdrawal of this rejection is respectfully requested for at least the following reasons. Hao and Abeshouse, either alone or in combination, fail to disclose, teach or suggest each and every feature set forth in the subject claims. In addition, the combination of Hao with Abeshouse in the manner suggested by the Examiner would be inoperable so is, thus, impermissible.

> To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. ***Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** *See* MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).
>
> References that teach away cannot serve to create a prima facie case of obviousness. *In re Gurley,* 27 F.3d 551, 553, 31 USPQ2d 1130 (Fed. Cir. 1994). ***If references taken in combination would produce a "seemingly inoperative device," we have held that such references teach away from the combination and thus cannot serve as predicates for a prima facie case of obviousness.*** *In re Sponnoble,* 405 F.2d 578, 587, 160 USPQ 237, 244, 56 C.C.P.A. 823 (1969) (references teach away from combination if combination produces seemingly inoperative device); *see also In re Gordon,* 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (inoperable modification teaches away). *McGinley v. Franklin Sports Inc.*, 262 F.3d 1339, 60 USPQ2d 1001, 1010 (Fed. Cir. 2001) (emphasis added).

Claims 4 and 9 depend respectively from independent claims believed to be allowable in view of the amendments and/or the comments provided above in Section IV. Therefore, claims 4 and 9 are also allowable because Abeshouse does not cure the deficiencies of Hao.

Additionally, Abeshouse, which generally relates to ranking bidders for auctions and facilitating competition among bidders while the auction is open, is not properly combinable with Hao, because the combination suggested by the Examiner is inoperable. In particular, Abeshouse is directed toward encouraging bidders to make bids (*see* paragraph 0092) and for those bids to be *bona fide* (*see* paragraph 0098). In every case, market information (*e.g.*, bids from other bid participants) is provided to the market leaders while the auction is open, even for cases in which market data is provided to all bidders because the market leader is a bidder. (*See* Figs. 9 and 10, *see also* Fig. 5). In essence, all the relevant action of in Abeshouse (*e.g.*, determining the market leader) occurs while the bidding is open. In contrast, such determinations cannot be made in Hao until the bidding is closed. Therefore, the proposed combination would render the combined invention inoperable. Moreover, Abeshouse expressly relies upon sharing market information while the bidding is open in order to meet its objectives, whereas Hao expressly describes this as private information that cannot be shared with others until (if at all) both the bidding has closed and the bids processed to determine winning bids. Accordingly, this rejection should be withdrawn.

VI. Rejection of Claim 7 Under 35 U.S.C. §103(a)

Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Hao in view of Muftic (US 5,850,442). Withdrawal of this rejection is respectfully requested for at least the following reasons. Hao and Muftic, either alone or when combined, fail to disclose or suggest each and every feature set forth in the subject claim. In addition, the combination of Hao with Muftic in the manner suggested by the Examiner is not permissible because the combination would be inoperable for at least the reasons described *supra* in Section V.

Claim 7 depends from independent claim 1, which is believed to be allowable. Muftic, which relates generally to secure Internet commerce (*see* Abstract), and specifically to transacting an auction by means of a BBS or a chat room (see Fig. 23), does not remedy the aforementioned defects of Hao with respect to claim 1. Accordingly, this rejection should be withdrawn.

VII. Rejection of Claims 10 and 13 Under 35 U.S.C. §103(a)

Claims 10 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hao in view of Cafino, *et al.* (US 2004/0015415, hereinafter referred to as "Cafino"). Withdrawal of this rejection is respectfully requested for at least the following reasons. Hao and Cafino alone or in combination fail to disclose or suggest each and every feature set forth in the subject claims. In addition, the combination of Hao with Cafino in the manner suggested by the Examiner is impermissible because the combination would be inoperable for at least the reasons described *supra* in Section V.

Claims 10 and 13 depend from independent claim 8, which is believed to be allowable. Cafino is insufficient to remedy the aforementioned inadequacies of Hao. In addition, applicant's representative notes that Cafino does not teach or suggest "***accepting*** the bid based on the lowest price" as recited in claim 10. Contrary to the Examiner's assertions at page 10 of the Office Action, Cafino (at the indicated portions) merely describes the well-known Dutch auction, in which all winning bidders pay the lowest price. Defining the ***price*** to be paid based upon the lowest price is materially distinct from ***accepting*** the bid based upon the lowest price. Moreover, the lowest price in the Dutch auction is determined only after the bids are closed, whereas accepting the bid can only occur while the bidding is open. Accordingly, this rejection should be withdrawn.

VIII. Rejection of Claims 15 and 16 Under 35 U.S.C. §103(a)

Claims 15 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hao in view of Ginsberg (US 2003/0055774). Withdrawal of this rejection is respectfully requested for at least the following reasons. Hao and Ginsberg, either alone or in combination, fail to disclose, teach or suggest each and every feature set forth in the subject claims.

In particular, Ginsberg does not cure the deficiencies of Hao with respect to independent claim 8 from which claims 15 and 16 depend. Moreover, Ginsberg does not teach or suggest "providing a rebate when ***the average price paid is not equal to the final price*** determined according to the volume of product purchased" as recited the subject claims. Rather Ginsberg teaches redistributing excess profits obtained from a sale of an item at artificially high prices. (*See* paragraphs 0006, 0041). The determination of whether there was an artificially high price is not whether two prices are unequal, but instead whether the measured difference between two

selected price points ***exceeds a defined difference level.*** (*See* paragraphs 0039). That is, the two price points are expected to be not equal in Ginsberg (*e.g.*, the running average is not expected to equal the last executed trade – *see* paragraph 0038), yet redistributing is triggered only by the difference being excessive, such as "anything over 200% of the reserve price." (*See* paragraph 0042). 200% over the reserve price, or any other defined difference level, is materially distinct from ***not equal***. Accordingly, for at least the foregoing reasons, this rejection of claims 15 and 16 should be withdrawn.

IX. Rejection of Claims 17-19 Under 35 U.S.C. §103(a)

Claims 17-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hao in view of Ginsberg, as applied to claims 15-16, and in further view of PTO 892 reference U (hereinafter referred to as "892U"). Withdrawal of this rejection is respectfully requested for at least the following reasons. Hao, Ginsberg, and 892U, either alone or in combination, fail to teach or suggest each and every feature set forth in the subject claims.

In particular, claims 17-19 depend either directly or indirectly upon dependent claim 15 and independent claim 8, which are believed to be allowable. Neither Ginsberg nor 892U make up for the deficiencies of Hao with respect to independent claim 8, and 892U does not make up for the deficiencies of Ginsberg with respect to claim 15. Thus, the instant claims are also allowable for at least the reasons supplied in sections IV and VIII. Accordingly, this rejection should be withdrawn.

X. Rejection of Claim 20 Under 35 U.S.C. §103(a)

Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Hao in view of Ginsberg, as applied to claim 15, and in further view of PTO 892 reference V (hereinafter referred to as "892V"). Withdrawal of this rejection is respectfully requested for at least the following reasons. Hao, Ginsberg, and 892V, alone or when combined, fail to disclose or suggest each and every feature set forth in the subject claim.

Claims 20 depend directly upon dependent claim 15 and indirectly upon independent claim 8, both of which are believed to be allowable over the cited art. Neither Ginsberg nor 892V can remedy the deficiencies of Hao with respect to independent claim 8. Furthermore, 892V does not make up for the deficiencies of Ginsberg with respect to claim 15. Accordingly,

claim 20 is also allowable for at least the reasons supplied in sections IV and VIII. Thus, this rejection should be withdrawn.

CONCLUSION

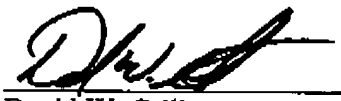
The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [GEDP111USA].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TUROCY & CALVIN, LLP



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